



IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

UNITED STATES OF AMERICA

v.

Criminal No. 3:08CR185

JAMES S. LESANE

MEMORANDUM OPINION

On September 29, 2008, the Court sentenced Lesane to a 140-month term of imprisonment. See United States v. Lesane, 3:08cr185 (E.D. Va. Sept. 29, 2008). Lesane appealed his conviction and sentence and that appeal is currently pending before the United States Court of Appeals for the Fourth Circuit.

On June 16, 2009, the Court received a 28 U.S.C. § 2255 motion from Lesane. It is well-settled, however, that a motion under section 2255 should not normally proceed while an appeal from the conviction is pending. See 3 Charles A. Wright, et al., Federal Practice and Procedure Criminal § 597 (3d ed. 2008); see also Rules Governing Section 2255 Proceedings for the United States District Courts, Advisory Committee's Note to Rule 5 (explaining that "the orderly administration of criminal law precludes considering such a motion absent extraordinary circumstances" (quoting Womack v. United States, 395 F.2d 630, 631 (D.C. Cir. 1968))). Therefore, by Memorandum Order entered July 10, 2009, the Court directed Lesane to show cause within eleven (11) days of the date of entry hereof as to why his § 2255 motion should proceed during the pendency of his direct appeal.

On July 17, 2009, Lesane responded to the Court's July 10, 2009 Memorandum Order. Lesane, however, failed to demonstrate any extraordinary circumstances that would warrant allowing his 28 U.S.C. § 2255 motion to proceed while his appeal is pending. Accordingly, Lesane's 28 U.S.C. § 2255 motion (Docket No. 71), motions to supplement his 28 U.S.C. § 2255 motion (Docket Nos. 76, 77), and his motion to proceed in forma pauperis in conjunction with his 28 U.S.C. § 2255 motion (Docket No. 73) will be DENIED WITHOUT PREJUDICE to refile upon the conclusion of his direct appeal.

The Clerk is directed to send a copy of the Memorandum Opinion to Lesane and counsel of record.

An appropriate Order shall issue.

_____/s/ REP_____
Robert E. Payne
Senior United States District Judge

Date: August 5, 2009
Richmond, Virginia